

REMARKS

Claims 1-18 were presented in the application as filed, and claims 8-18 were canceled and new claims 19-28 were added in a Preliminary Amendment filed with the application. Claims 1, 2, 4-7, 19, 20, and 27 were canceled, and new claims 29 and 30 were added in a Response filed on November 19, 2004. Claims 31-35 were added in a Response filed on April 11, 2005. Claims 31 and 32 were canceled, and new claims 36-38 were added in a Request for Continued Examination filed on December 14, 2005. Claims 3, 21-26, 28, 34, and 35 were amended; claims 33 and 36-38 were cancelled; and claims 42-49 were added in a Response filed September 15, 2006. In response to the current Office Action, claims 3, 28, 43, and 46 are amended, and claims 43 and 46 are cancelled. Claims 3, 21-26, 28-30, 34, 35, 39-42, 44, 45, and 47-49 are pending, reconsideration of the application, and allowance of all claims pending herein are respectfully requested in view of the remarks below.

Telephone Interview

The applicants' representatives gratefully appreciate the time afforded by Examiner Conley during a telephone interview on February 6, 2007. Although no agreement was reached during the telephone interview, applicants' representatives wish to thank Examiner Conley for his helpful suggestions in connection with amending the claims in an effort to better distinguish applicants' invention over the applied prior art. The proposed amendments presented during the interview are incorporated above, and the substance of the remarks and arguments presented during the interview are incorporated below.

Claim Rejections Under 35 U.S.C. §103(a)

In the Office Action, claims 3, 21-26, 28-30, and 33-49 were rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Patent No. 6,718,583 to Diaz in view of U.S. Patent No. 4,794,037 to Hosoda *et al.* and further in view of U.S.

Patent No. 3,493,980 to Haller. Applicants respectfully traverse this rejection for the following reasons.

Initially, Diaz discloses a conventional fire resistant mattress generally comprising a fire barrier layer 20 and a ticking 14 enclosing a foam core 12. Diaz also discloses sewing the ticking 14 to the barrier layer 20 (see col. 3, lines 41 and 42).

Hosoda *et al.* discloses flameproof fiber products and methods of making flameproof fire products. The flameproof fire products are made by chemically treating fabrics having antimony oxide with a halogen and/or phosphorous-based agent. For the halogen and/or phosphorous-based agents to be effective the fabric to be treated must have antimony trioxide present in the fabric.

Haller discloses a mattress generally comprising removable sanitary covers (12 and 14) and reinforced side panels (16). The sanitary covers are attached to the side panels via a zipper and the side panels are attached to the mattress coil springs via flanges.

By this amendment, independent claims 3 and 28 have been amended to include a limitation recited in claims 43 and 46 respectively, *i.e.*, to recite an open flame resistant mattress wherein a thermally insulating fabric layer is "attached to the fire barrier fabric layer via needle punching." In addition, independent claims 3 and 28 have been amended to recite "that a portion of said thermally insulating layer is disposed in said fire barrier fabric layer" which results from the attachment via needle punching. Support for the attachment between the two layers via needle punching is found in paragraphs [0025] and [0034] of the specification. The introduction of new matter has been carefully avoided.

First, neither Diaz, Hosoda *et al.*, nor Haller, either alone or in combination, disclose, teach or suggest a mattress employing "needle punching" to attach a thermally insulating layer to a fire barrier fabric layer as recited in amended independent claims 3 and 28. Further, neither Diaz, Hosoda *et al.*, nor Haller, either alone or in

combination, disclose, teach or suggest a mattress wherein "a portion of said thermally insulating layer is disposed in said fire barrier fabric layer."

Second, as noted in the Office Action, Diaz fails to disclose a thermally insulating layer having one char-forming flame retardant fiber. Diaz specifically discloses a single outermost ticking 14. See Diaz at col. 2, lines 19-20; and col. 3, lines 10-11, 22-27, and 34-35. Diaz also specifically discloses the ticking 14 to be a dress cover fabric. See Diaz at col. 1, lines 9-11.

It is respectfully submitted that one having ordinary skill in the art would not be motivated to modify the ticking of Diaz, as suggested in the Office Action, with flame retardant chemicals as taught by Hosoda *et al.* For example, it is well known that the ticking of a mattress is not made flame proof or flame resistant. Even Diaz notes that with reference to the ticking and edge binding that "[n]one of the component materials are usually made from fire retardant or flame resistant materials." See Diaz at col. 3, lines 21-27. In particular, ticking is for decorative and comfort purposes. The visual appeal of a ticking would be greatly reduced if not eliminated as flame retardant fibers or materials are typically visually unappealing. Additionally, flame retardant fibers or materials are typically uncomfortable to the touch. A ticking having flame proof or flame resistant materials would reduce the comfort level of any product having the foregoing. Thus, one would not be motivated modify the ticking of Diaz with flame retardant chemicals taught by Hosoda *et al.* due to the unwelcome outcome.

Third, Diaz discloses a conventional fire resistant mattress generally comprising a fire barrier layer and a ticking enclosing a foam core. Hooda *et al.* discloses flameproof fiber products and methods of making flameproof fire products by chemically treating fabrics having antimony trioxide with a halogen and/or phosphorous-based agent. For the halogen and/or phosphorous-based agents to be effective the fabric to be treated must have antimony trioxide present in the fabric. Diaz fails to explicitly or implicitly disclose a ticking having antimony trioxide. Thus, even if Diaz is combined with Hosoda *et al.* as suggested in the Office Action, such a combination would fail to result in a ticking which is flame proof.

Fourth, Haller is directed to removable sanitary mattress covers. In particular, in Haller, side panels (16) are directly attached to the inner mattress, i.e. springs (28), via securing flanges (54). The top and bottom coverings (12, 14) are attached to the side panels (16) via zippers. The side panels (12) are securely attached in that they have very little latitude for movement. Subsequently, the attached covers (12,14) do not slide around or bunch up. The limited movement is dependent upon the attachment of the side panels (16) to the inner springs (28) via the attachment flanges (54).

If one were to attempt to incorporate the coverings (12, 14) and the side panels (16) and with the mattress of Diaz as an outermost covering as suggested in the Office Action, the attachment flanges (54) would have to penetrate the fire barrier fabric layer (20) of Diaz to be secured to the inner mattress/springs of Diaz. This would render the overall flame resistance of the mattress of Diaz useless as a flame could simply travel along the flammable flanges to the inner mattress core, which contains combustible material. Accordingly, attempting to combine the covers disclosed in Haller with Diaz would render the fire resistant mattress of Diaz unsatisfactory for its intended purpose.

Thus, there is no teaching or suggestion, either in Diaz, Hosoda *et al.*, or Haller, independently or in combination, for an open flame mattress or article as now recited in amended independent claims 3 and 28. Dependent claims 21-26, 29, 30, 34, 35, 39-42, 44, 45, and 47-49 are believed to be allowable for the same reasons noted above in connection with amended independent claims 3 and 28 from which they directly or ultimately depend, as well as for their own additional features.

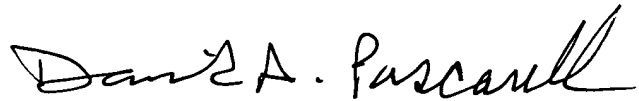
Withdrawal of the 35 U.S.C. §103(a) rejection is respectfully requested.

CONCLUSION

There being no other outstanding issues, it is believed that the application is in condition for allowance, and such action is respectfully requested.

If a telephone conference would be of assistance in advancing the prosecution of the subject application, the Examiner is invited to contact applicants' representative at the number provided.

Respectfully submitted,

A handwritten signature in black ink, reading "David A. Pascarella". The signature is fluid and cursive, with a horizontal line drawn underneath it.

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